IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

WA.No.2727 of 2007

AGAINST THE JUDGEMENT IN WPC.23258/2006 Dated 30/10/2007

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APPELLANT/ PETITIONER:-

S. CHANDRAN @ MANICHAN,
TODDY CONTRACTOR, PATTARUMADOM HOUSE,
CHIRAYINKIL, TRIVANDRUM
(NOW UNDERGOING IMPRISONMENT AT CENTRAL PRISON, TRIVANDRUM).

BY ADV. SRI.V.V.ASOKAN
SMT.A.PARVATHI MENON
SRI.P.SANJAY

RESPONDENTS/ RESPONDENTS:-

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1. INTELLIGENCE OFFICE(INVESTIGATION BRANCH)
   COMMERCIAL TAXES, TRIVANDRUM.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
   KERALA AT TRIVANDRUM.

3. STATE OF KERALA,
   REPRESENTED BY SECRETARY, TAXES DEPARTMENT,
   GOVERNMENT SECRETARIAT,
   TRIVANDRUM.

4. THE TAHSILDAR,
   CHIRAINKEEZHU,
   THIRUVANANTHAPURAM DISTRICT.

BY SPECIAL GOVERNMENT PLEADER SRI.VINOD CHANDRAN.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 11/12/2007,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.M.JOSEPH, J.

W.A.No.2727 of 2007

Dated, this the11th day of December, 2007

JUDGMENT

H.L.Dattu, C.J.

A simple issue is made a big issue by the learned counsel appearing for the appellant.

(2). Petitioner has filed the writ petition, inter alia questioning the recovery proceedings initiated by the respondents, pursuant to the penalty order passed by the Intelligence Officer, Commercial Taxes, Thiruvananthapuram dated 21.10.2002 for contravention of certain provisions of the Act. The order so passed is confirmed by the revisional authority and thereafter by this Court in W.P.(C). No.23258 of 2006 by its order dated 30th October, 2007. Aggrieved by these orders, the appellant is before us in this appeal.

(3). The income tax authorities had searched the office premises of Sri.S.Chandran, Abkari Contractor and the office of the firm 'Usha Traders' owned by Sri.Chandran and his wife on 14.10.1999 and had recovered the books of accounts and other records evidencing the business transactions done by them for the years 1998-99 and 1999-2000. Those seized materials and records relating to the business transaction had been forwarded to the intelligence branch of Commercial Taxes Department under Section 138 of the Act. At the time of search and seizure, the Income Tax Department had recorded the statement of one Sri.K.Balachandran, who was working as Manager of the appellant herein. In his sworn statement, Sri.Balachandran had stated, that, the appellant was conducting the sales of toddy, arrack and

spirit in the names of different persons. He had also disclosed the nature of activity that was carried on by the appellant for the assessment years in question.

(4). The Intelligence Officer of the Sales Tax Department thereafter has scrutinized the documents which were furnished by the Income Tax Department and has noted in detail the transactions of the appellant for the relevant assessment years. He has also calculated the purchases of spirit, arrack and foreign liquor in different ranges and the sales effected for the assessment years 1998-99 and 1999-2000, and after such verification, has quantified the tax liability of the appellant.

(5). Since the appellant had not registered himself as a dealer under the Act and had not maintained true books of accounts and had failed to comply with the other provisions of the Kerala General Sales Tax Act, the Intelligence Officer had issued notice under Section 45A of the Act, inter alia directing the petitioner/appellant to show cause, why the penalty for the offences noticed in the show cause notice should not be imposed. The said notice was sought to be served through the Superintendent of District Jail, Kollam, and since the same could not be done, the Intelligence Officer of the Sales Tax Department after obtaining permission from the Sessions Court, Kollam for service of notice on the appellant through the Superintendent of District Jail, Kollam, had served the show cause notice to the appellant who is now lodged in the Central Jail. After service of the notice, the appellant through his lawyer had requested the Intelligence Officer to permit the appellant to take out the extracts of documents on which the officer intends to

rely upon for levying penalty. The request of the appellant was granted by the Intelligence Officer by his order dated 1-7-2001. In spite of such permission, the learned counsel appearing for the appellant did not take the extracts of the documents on which the Intelligence Officer of the Department had relied upon while proposing to impose the penalty under Section 45A of the Act. Thereafter another counsel had appeared for the appellant and he had also asked for sufficient time to reply to the show cause notice issued by the Intelligence Officer of the Department. The officer had granted time to the appellant's learned counsel to take extracts of the documents which the appellant wanted, but also to file his reply, if any, to the show cause notice. After giving sufficient opportunity, since neither the appellant nor his counsel filed any objections to the show cause notice issued under Sec.45A of the Act, the Intelligence Officer has proceeded to pass the order imposing a penalty not exceeding twice the amount of sales tax. The same was served on the appellant on 21-10-2002.

(6). Aggrieved by the orders of penalty imposed by the Intelligence Officer of the department, the assessee had carried the matter by filing a revision before the Deputy commissioner of Taxes, Kollam, who by his order dated 10.9.2004 has dismissed the revision petition. Aggrieved by the order so passed by the first revisional authority, the assessee had carried the matter by way of second revision before the Commissioner of Commercial Taxes, Thiruvananthapuram. The second revisional authority after hearing the counsel for the petitioner has rejected the revision petition and thereby has confirmed the orders passed by the Intelligence Officer of the department. Aggrieved by these three orders, the assessee was before this Court in W.P.

(C) No. 23258 of 2006. Before the learned Single Judge the only contention that was canvassed was that, the Intelligence Officer of the department without affording sufficient opportunity of hearing to the petitioner, could not have passed the impugned order levying penalty under Section 45A of the Act. The learned Single Judge, after going through the records produced by the learned Government Pleader and further being of the opinion that though sufficient opportunity was given to the petitioner/appellant, the same was not made use of by the appellant and therefore the authority was justified in passing the impugned order.

(7). Aggrieved by the said order passed by the learned Single Judge, the appellant is before us in this appeal.

(8). Sri. Asokan, the learned counsel appearing for the assessee would contend, that, the Intelligence Officer of the department merely relying upon the documents furnished by the Intelligence Wing of the Income Tax Department could not have imposed penalty under Sec.45A of the Act. In aid of his submission, the learned counsel has brought to our notice the decision in the case of ***P.C.Ittymathew & Sons Vs. Deputy Commissioner of Sales Tax {(2001) 121 STC 1}***. The learned counsel would further contend, that, the assessing authority without affording sufficient opportunity of hearing to the appellant could not have passed the impugned order. In the alternative it is contended that the order suffers from violation of principles of natural justice, since the intelligence officer has not granted sufficient opportunity of hearing to the petitioner to reply to the show cause notice issued by the authority under Sec.45 A of the Act. Lastly it is stated that the Intelligence Officer of the

department was not justified in imposing double the amount of tax by way of penalty for the alleged offences noticed in the notice issued under Sec.45A of the Act.

(9). Sri.Vinod Chandran, learned Government Advocate (Taxes) justifies the impugned order passed by the Intelligence Officer of the department and confirmed by the Deputy Commissioner and also the Commissioner of Commercial Taxes. He has also produced before us the records maintained by the authorities in support of his contention that the Intelligence Officer of the department has not merely relied upon the documents seized by the income tax department, in arriving at a conclusion that the appellant had not maintained any accounts as required under the Act and the Rules. Learned counsel would contend that after obtaining the copies of the seized documents from the income tax department, the Intelligence Officer has carefully scrutinized those documents and thereafter has come to the conclusion that the appellant has effected unaccounted purchases and sales of arracks, spirit, IMFL etc. In support of that contention, the learned counsel has taken us through the calculation sheets maintained by the Intelligence Officer of the department which runs from pages 63 to page 102 of the records. The learned counsel also takes us through the statement made by Sri. Balachandran who was the Manager of the appellant during the relevant assessment years, who has stated before the officers of the Income Tax Department, that, the appellant was conducting business for the assessment years in question in different names in different ranges of Kollam district. The learned counsel would further submit that the Intelligence Officer after giving

sufficient opportunity to the appellant to file objection, if any, to the show cause notice issued under Sec.45A of the Act and though the said notice was served on the appellant and since the appellant did not file any reply to the said notice, the Intelligence Officer being left with no other alternative has proceeded to impose the penalty under Sec.45A of the Act. Learned counsel would also submit that since the petitioner had failed to register himself as a dealer under the Act and has failed to maintain true and complete accounts and failed to comply with the provisions of the Act, the intelligence officer was justified in imposing the penalty not exceeding double the amount of tax. In aid of his submission, the learned counsel has taken us through the provisions of Section 45 A of the Act.

(10). The questions that would arise for our consideration and decision are:

> *(i). Whether the Intelligence Officer was justified in passing the impugned order based on the documents received from the Intelligence Wing of the Income Tax Department?*
>
> *(ii). Whether the assessee was granted sufficient opportunity of hearing by the officer of the Sales Tax Department before confirming the show cause notice issued for levy of penalty under Sec.45A of the Act?*
>
> *(iii). Whether the intelligence officer of the Department was justified in levying double the amount of tax by way of penalty while passing orders under Sec.45A of the Act?*

(11). Let us take the last issue first for our consideration, since it would not detain us for long. Section 45A of the Act has undergone several

amendments after its insertion in the Act by Act 12 of 1976, with effect from 27.10.1976. The legislature by Act 21 of 1978 has substituted the words 'an amount of fifty rupees or twice the amount of sales tax on the amount evaded or sought to be evaded, which ever is higher' by “an amount not exceeding twice the amount of Sales Tax or other amount evaded or sought to be evaded, where it is practicable to quantify the evasion or an amount not exceeding ten thousand rupees in any other case”. Section 45A of the Act commences with a non-obstante clause. The section prevails over Section 46 of the Act which provides for levying of penalty for submitting untrue returns. This section empowers the assessing authority or the Appellate Assistant Commissioner, if he is satisfied that any person has contravened the provisions of the KGST Act, such authority or officer may direct such person to pay penalty, an amount not exceeding the amount of sales tax if it is quantified or the actual amount evaded by way of tax which ought to have come to coffers of the State Government or the tax sought to be evaded where it is practicable to quantify the actual amount payable by the person for contravening the sub clauses (a) to (h) of Section 45A of the Act. The legislature also provides that in any other case, where it is not possible to quantify the evasion of tax for contravention of the provisions of the Act, the levy of penalty shall not exceed ten thousand rupees.

(12). The penalty for contravention of certain provisions of the Act is prescribed under Section 45A of the Act. Section 45A empowers the assessing authority or the Appellate Assistant Commissioner to impose penalties, if in the course of any proceedings they are satisfied that, being a

person required to register himself as a dealer under the Act, did not get himself registered; has failed to keep true and complete accounts; has failed to submit any return as required under the provisions of the Act or the Rules made thereunder; has submitted an untrue or incorrect return; has failed to comply with all or any of the terms of any notice or summons issued to him by or under the provisions of the Act or the Rules made thereunder; after purchasing any goods in respect of which he has made a declaration under proviso to sub-section (3) of Section 5, has failed to make use of the goods for the declared purpose; has acted in contravention of any of the provisions of the Act or any rule made thereunder; and lastly, has abetted the commission of any of the above offences. All the defaults are independent of each other. The penalties can be for any one or more of the defaults.

(13). The quantum of penalty leviable is separately provided. This provision has been amended from time to time. The provision as it originally stood provided that the penalty shall be an amount of fifty rupees or twice the amount of sales tax on the amount evaded or sought to be evaded whichever is higher. This provision is amended by Act 21 of 1978 with effect from 1.4.1978 which provides for the maximum amount of penalty that could be levied for the offences contemplated under the section. The penalty that could be levied by the Sales Tax Officer or the Appellant Assistant Commissioner is an amount not exceeding twice the amount of sales tax or the amount evaded or sought to be evaded whichever it is practicable to quantify the evasion. In other cases, the maximum amount of penalty leviable is ten thousand rupees. Fixation of rate of penalty is a matter of policy and it is

for the legislature to devise the policy as well as the procedure for levying penalty. The fixation of rates of penalty is measured, sometimes, the difference between the tax assessed and paid on the returns filed or the amount evaded or sought to be evaded. In so far as the State is concerned, the loss has to be and could be legitimately measured with reference to such tax sought to have been or attempted to have been evaded. In the present case, the assessing authority after scrutinising the entire seized documents which were handed over by the income tax department has independently quantified the suppression of both purchases and sales, and it is only thereafter quantified the tax liability of the appellant/assessee and based on such quantification, has imposed a penalty not exceeding the amount of sales tax sought to be evaded. Therefore, the order passed by the Intelligence Officer is within the parameters of Section 45A of the Act. Before we conclude on this issue, it may be useful to refer to the decision of this Court in the case of **Sudhi vs. Intelligence Officer, 85 STC 337.** In the said decision, the court has observed:-

> "*The use of the words "evasion" and the expression "sought to be evaded" in section 45A(1) of the Kerala General Sales Tax Act, 1963 makes it clear that it is not the mere default that is made the foundation for the liability to penalty, but it is the contumacious or fraudulent or other blameworthy or objectionable conduct of an assessee in fulfilling his obligations mentioned in section 45A of the Act, that will attract the levy of penalty. The concept of mens rea is embedded in the expressions "evaded" or "sought to be evaded" occuring in section 45A(1) of the Act.*
>
> *Section 45A of the Kerala General Sales Tax Act postulates that if the assessing authority or the Appellate*

Assistant Commissioner is "satisfied" "that any one of the defaults has taken place, the concerned authority may initiate proceedings for the levy of penalty". It is not the mere ipse dixit of the officer that will enable him to initiate proceedings or to levy the penalty; he should be "satisfied" that the statutory requisites for the exercise of the power exist. Section 45A does not vest in the concerned authority any blanket power to enable him to levy penalty without any material or evidence. The courts can properly enquire independently in appropriate cases whether the "condition precedent" exists. The discretion vested in the officer under section 45A of the Act is not an unexaminable or unfettered discretion.

The initiation of proceedings under section 45A is discretionary. Even if a person has committed any one of the defaults specified in section 45A(1) of the Act and the concerned authority is also "satisfied" about the same, the levy of penalty is not compulsive, but only enabling or permissive. The maximum amount of penalty that can be levied is alone indicated. Before penalty is imposed the authorities are bound to give the assessee an opportunity of being heard. Moreover, there are two forums before which an order imposing penalty under section 45A can be challenged. Therefore, section 45A cannot be said to confer unbridled or uncanalised power to imposed penalty.

Although under explanation I to section 45A the burden of proving that any person is not liable to pay penalty is cast on such person, this provision is only in the realm of evidence and not a rule of law. The various matters to be complied with and specified in section 45A(1) are all matters within the exclusive knowledge or domain of the dealer of the assessee. He will be in a better position to point out the reasons or the special circumstances which disabled him from complying with the obligations imposed by the Act. It cannot be stated that explanation I is either unauthorised or otherwise unfair or unreasonable nor can it be

said that explanation I is hit by article 14 of the Constitution of India or any of the Constitutional guarantees. However, since the person is required to prove a negative fact, the matter should be evaluated on a preponderance of probabilities.

The quantum of penalty should depend upon the gravity of the offence. If it is not so, and the maximum penalty is levied, in a mechanical manner, it would not be a proper exercise by the officer of the judicial discretion vested in him.".

(14). Re.- Contention No.(ii): The principle of audi alteram partem is a basic concept of principles of natural justice. The omnipotency inherent in the doctrine is that, no one should be condemned without being heard or given an opportunity to the person to present his case before taking the decision or action. Its application depends on the factual matrix to improve administrative efficiency and meet out justice. Keeping these principles in view, let us advert to the fact situation in the present case. The Intelligence Officer before passing the impugned order under Section 45A of the Act has issued a show cause notice to the appellant, inter alia directing him to show cause, why penalty under Section 45A of the Act should not be imposed for violating certain mandatory provisions under the Act and the show cause notice came to be served through Superintendent of Jail, since the assessee is lodged in Central Prison. After such service of notice, the assessee had engaged the services of a learned counsel who made representation for perusal of the documents and also for the copies of the documents on which the Intelligence Officer intends to rely on for imposing the penalty. Though an opportunity was given to the assessee's learned counsel to verify the documents and also to take copies of the documents which he had sought for in his representation, for

the reason best known either to the assessee or his learned counsel, the opportunity so granted was not utilised by the assessee and therefore, this is not a case where notice was not issued and also not served on the assessee, but a case where notice was not only issued and also served on the assessee and the opportunity that was given was not made use by the assessee. Therefore, the contention of the learned counsel for the appellant that an opportunity of fair hearing was not granted to the appellant cannot be accepted. Accordingly, the second issue which we have raised for our consideration and decision requires to be answered against the assessee and accordingly, we do so.

(15). Re.-Contention (i):- The learned counsel for the appellant in regard to this issue would contend that the Intelligence Officer mainly relying on the materials collected by the income tax department in the proceedings held under Section 132 of the Income Tax Act has imposed penalty under Section 45A of the Act and therefore, the same is impermissible, and therefore, the order imposing penalty under Section 45A of the Act is not illegal but highly improper. The learned counsel would further submit that for the purpose of sales tax, it would be necessary not only to show that the source of money has not been explained but also to show the existence of some material to show that the acquisition of money by the assessee has resulted from transactions liable to sales tax and not from other sources. In aid of this submission, the learned counsel relies on the observations made by Apex Court in the case of **Girdharilal Nannelal vs. Sales Tax Commissioner,** 39 STC 30, **P.C.Itty Mathew and sons vs. Deputy Commissioner of Sales Tax**,

121 STC 1.

(16). In the instant case, the Intelligence Officer in his order under Section 45A of the Act has observed:

> "The Incometax authorities have searched the offices of Sri.S.Chandran, Abkari Contractor, residing at Pattarumadam, Chirayinkil, Thiruvananthapuram and the offices of the firm 'Ushus Traders' owned by Sri.S.Chandran and his wife on 14-10-'99 and recovered the books of accounts and other records evidencing the business transactions done by him for the years 98-99 and 99-2000. The details including the extracts of the following records relating to the business transactions as identified by me have been forwarded to the Intelligence Branch of Commercial Taxes Department under Section 138 of the Incometax Act.
>
> 1. xxx xxx xxx
> 2. xxx xxx xxx
> 3. xxx xxx xxx
> 4. xxx xxx xxx
> 5. xxx xxx xxx
> 6. xxx xxx xxx
> 7. xxx xxx xxx
> 8. xxx xxx xxx
> 9. xxx xxx xxx
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> 20. xxx xxx xxx
> 21. xxx xxx xxx
> 22. xxx xxx xxx
> 23. xxx xxx xxx
> 24. xxx xxx xxx
> 25. xxx xxx xxx
>
> The enquiries conducted with reference to the sworn

statement made by Sri.K.Balachandran, Manager of Sri.S.Chandran before the Deputy Director of Incometax (Investigation), Thiruvananthapuram revealed that Sri.Chandran has been indulging in clandestine business of spirit, arrack and IMFL through various shops auctioned and managed by his relatives or agents at Chirayinkil, Attingal, Kilimanoor, Vamanapuram, Varkala and Thiruvananthapuram for the years 98-99 and 99-2000.

From the accounts and statements recovered with reference to the sworn statement of the Manager of Sri.Chandran, it is revealed that he has effected the following transactions relating to the assessment years 98-99 and 99-2000 for which you are liable for sales tax registration and assessment under section 13 and 17 of the KGST ACT, 1963..

1998-99

Documents relied on	Period	Quantity	Amount
CPM II (122)	23/2/99 to 17/3/99	40980 Ltrs.	Rs.20,54,800/-
CPM II (122)	2/2/99 to 29/2/99	47775 Ltrs	Rs.28,27,125/-
CPM II (122)	22/2/99 to 29/3/99	77700 Ltrs.	Rs.42,14,204/-
CPM II (122)	20/7/98 to 26/11/98	69285 Ltrs.	Rs.28,72,820/-
CPM II (122)	26/11/98 to 2/2/99	41094 Ltrs.	Rs.28,72,820/-
CPM III (2)	2/2/99 to 17/2/99	41525 Ltrs.	Rs.24,54,825/-
CPM III (2)	19/2/99 to 21/3/99	40082 Ltrs.	Rs.25,00,202/-
CPM III (2)	21/3/99 to 24/3/99	44225 Ltrs.	Rs.26,68,075/-
CPM III (2)	27/3/99 to 30/3/99	50800 Ltrs.	Rs.30,48,000/-
CPM II (82)	30/4/98 to 31/3/99	57615 Ltrs.	Rs.45,08,157/-
CPM II (81)	31/6/98 to 31/3/99	20625 Ltrs.	Rs.16,06,091/-
CPM II (144)	1/12/98 to 31/3/99	89771 Ltrs.	Rs.70,02,138/-
	Total	621477 Ltrs.	Rs.4,04,18,437/-

You have also effected sale of Arrack in packets out of purchases as such from other sources as follows:

CPM II (82)	31-7-98 to 31-3-99	160951 pkts.	Rs. 13,07,468/-
CPM II (122)	23-2-99 to 17-3-99	355265 pkts.	Rs. 32,36,586/-
CPM II (81)	31-5-98 to 31-3-99	1057666 pkts.	Rs. 97,19,801/-
CPM II (144)	1-12-98 to 31-3-99	1162525 pkts	Rs. 1,60,88,100/-
CPM II (32) & (4)	1-4-98 to 31-12-98	1342205 pkts.	Rs. 1,20,79,845/-
CPM II (32) & (4)	1-4-98 to 31-12-98	10147 Ltrs.	Rs. 8,11,760/-
			Rs.4,32,43,560/-

You have also converted the following quantity of spirit

from 1.4.98 to 31.12.98 for sale through different shops (The out turn recorded ranges from 2.5 to 3.5 times of the spirit consumed.

CPM II (32) & 40 356082 Litr. x 3 1068246 @ Rs.80 Rs.8,54,59,680/-
==========

The sales turnover relating direct supply of spirit will be estimated by adding 25% G.P. to the purchase value as under.

Rs.4,04,18,.437/- + 25% Rs.1,01,04,609 = Rs.5,05,23,046.

From the above, it is evident that you failed to take out registration for the year 98-99 and 99-2000 and pay tax on the taxable turnover worked out as above. This is a clear violation of the provisions under Section 13 & 27 of the KGST Act 1963, warranting penal action under section 46 and 45A of the KGST Act, 1963. It was therefore proposed to impose a penalty at double the tax due worked out as below under Section 45A of the KGST Act 1963 for the year 98-99 and 99-2000 vide notice read 1st above".

(17). The relevant portion of the order extracted above clearly shows that the taxable turnover of the appellant for the assessment years 1998-99 and 1999-2000 was determined on the basis of the material seized by the income tax department by the intelligence officer of the department after a detailed scrutiny of the documents seized and also the statement of K.Balachandran who was working as his manager at the relevant point of time. Before concluding that the appellant had huge taxable turnover under the provisions of the Sales Tax and therefore should have registered himself as a dealer under the Act, the intelligence officer had issued pre-assessment notice proposing to hold that though the appellant had huge taxable turnover under the Act had not complied with the mandatory provisions under the Act, and in spite of service of notice, the appellant had failed to reply the same either controverting or denying the proposal made in the notice. In spite of there

being no objection to the proposal made in the notice, the Intelligence Officer in his order has shown that the scrutiny of the material seized by the income tax department and handed over to sales tax department at their request would reveal that the appellant had clandestinely purchased and effected sales of IMFL and arrack during the relevant assessment year. In our view, after going through the entire records that was made available to us by the learned Government Advocate and the order levying penalty, for contravention of the provisions of the Act, it cannot be said that the same has been done by the mere ipse dixit of the officer. Therefore, in our opinion, the contention of the learned counsel for the appellant has no merit whatsoever, and further the reliance placed on the observations made by the Apex Court would not assist the appellant in any manner whatsoever. We say so, for the reason, that, in **Giridharilal Nannelal's** case the Supreme Court has observed that the approach which may be permissible for imposing liability for payment of Income tax in respect of unexplained acquisition of money may not hold good in sales tax cases. For the purpose of income tax it may in appropriate cases be permissible to treat unexplained acquisition of money by the assessee to be the assessee's income from undisclosed sources and assess him as such. As against that, for the purpose of levy of sales tax it would be necessary not only to show that the source of money has not been explained but also to show that the existence of some material to indicate that the acquisition of money by the assessee has resulted from transactions liable to sales tax and not from other sources.

In **P.C.Ittymathew's** case, turnover and taxable turnover under

the sales tax was calculated by the assessing authority merely on the basis of additions made by the income tax authorities and there was no material to show that additions represented income from transactions liable to sales tax and in facts and circumstances of such nature, the Apex Court has observed that since sales tax authorities had not established that the income disclosed by the appellant had been derived from the business transactions liable to sales tax, the Tribunal was justified in setting aside the best judgment assessment.

(18). In the present case, as we have already noticed that the Intelligence Officer of the department after securing the documents seized by the income tax authorities from the premises of the appellant has meticulously scrutinised the same and has concluded that though the assessee had huge taxable turnover, has failed to register himself as a dealer under the Act and has failed to file his returns and pay tax due under the Act. The conclusions reached by the Intelligence Officer is not on mere assumptions and presumptions, but after detailed verification of the documents seized from the premises of the appellant.

(19) In view of the above discussion, we are of the opinion, the appellant has not made out a case for our interference. Accordingly, the appeal requires to be rejected and it is rejected. No order as to costs.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

MS/DK.